IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

CIVIL REVISION APPLICATION NO. 186/2000.

1. Narayan R. Bhandare (now deceased)
through his legal representatives
1(a) Sitakant Narayan Bhandare,
major and his wife
1(b) Smt. Manda S. Bhandare,
major, married, both r/o. 12,
Raj Mahal, 1st Floor, Fontainhas,
Panaji-Goa.
1(c) Shanta Ramakant Borkar, major,
married, residing at D/202 Madhu Vihar,
M.G. Road, No.4 Kandivli,
West Mumbai 400 067 and her husband,
1(d) Ramakant Anant Borkar, (now deceased)
through his legal representatives
(d-i) Girish B. Desai and his wife
(d-ii) Maya G. Desai,
both r/o. Sitaladevi Temple Trust,
Lady Jamshedji Road, Mahim,
Mumbai 400 016.
(d-iii) Anand A. Shanbag and his wife
(d-iv) Pradnya A. Shanbag,
C B Shanta Co-op Housing Society,
Moghul Lane, Mahim, Mumbai 400 016.
(d-v) Dinesh R. Borcar and his wife
(d-vi) Sumita D. Borcar,
both r/o. D 202 Madhu Vihar
Mahatma Gandhi Cross Road No.4,
Kandivoli (West), Mumbai 400 007.
1(e) Sulochana Ramesh Deshpande
major, and her husband
1(f) Ramesh Ramkrishna Deshpande
major, married,
both residing at RB III 273/13
Central Railway Quarters,
Near Loco Work Parel West,
Mumbai 400 012.
2. Anussaiabai N. Bhandare (now deceased)

wife of No.1 Narayan R. Bhandare
through her Legal Representatives
Petitioners 1(a) to 1(f)

3. Laxmimikant S. Bhandare, (now deceased)
through his legal representatives

3(a) Deepak L. Bhandare, major and his wife

3(b) Durga, alias, Sonia D. Bhandare,
General Bernardo Guedes Road,
Panaji, Goa.

4. Kunda L. Bhandare,
r/o. Vila Olivent Marchon,
Gen. Bernardo Guedes Road, Panaji, Goa.

5. Bhaskar L. Bhandare, (deceased)
r/o. Talpavaddo, Cumbharjua, Ilhas, Goa.

6. Madhuri B. Bhandari (now deceased)
through her legal representatives

(a) Dr. D.B. Bhandari
(b) Mrs. Dalia D. Bhandari
r/o. Plot No. 57, Shreya Kranti Nagar,
Alto Betim, Bardez, Goa.
(c) Mr. S.S. Kanvinda
(d) Mrs. Anish Kanvinda,
Vijayalaxmi Aparts. Nimbalkar Colony,
Near Kavla Naka Kholapur, Maharashtra.
(f) Mr. R.B. Prabhu Desai
(g) Mrs. Bharati Prabhu Desai
both r/o. 685 Plot No.119 Nagali Hill,
Dona Paula.

7. Surendra H. Bhandare,
r/o. Talpavaddo, Cumbarjua Ilhas, Goa.

8. Ravindra H. Bhandare,
r/o. Talpavaddo, Cumbharjua, Ilhas Goa.

9. Millan R. Bhandare,
r/o. Cumbarjua, Talpavaddo, Ilhas Goa.

10. Malini H. Bhandare, spinster,
Cumbarjua, Talvaddo, Ilhas Goa.

11. Rajani H. Bhandare,
r/o. Cumbarjua, Talpavaddo, Ilhas, Goa.

12. Sarojini H. Bhandare,
r/o. Cumbarjua, Talpavaddo, Ilhas, Goa.

13. Sindhu H. Bhandare,
r/o. Talpavaddo, Cumbarjua, Ilhas, Goa.

14.Swaroopa H. Bhandare,
r/o. Cumbharjua, Talpavaddo, Ilhas, Goa.
15.Dinanath N. Bhandare,
r/o. Block C-r Adharsh Colony,
Caranzalem, Ilhas, Goa.
16.Kamlabhai D. Bhandare, (since dec.)
through legal heirs
r/o. Adharsh Colony, Caranzalem.
(a) Mrs. Asha Balwant Talwadkar
(b) Mr. Balwant Kalyan Talwadkar
Both residing at : H/F-1,
Alcon Estate, Tonca, Miramar,
P.O. Caranzalem, Ilhas-Goa 403 002.
(c) Mrs. Lata Prakash Kamat
(d) Mr. Prakash Shivram Kamat
Both residing at : House No. 668,
State Bank Colony, Torda, Porvorim, Goa.
17.Narcinva V. Bhandare, (now deceased)
through his representative
(a) Vilasini Bhandari
Housing Board Colony, Porvorim.
18.Manikbai V. Bhandare, widow,
r/o. Caranzalem, (expired)
(name deleted as per order on exh. 57)
19.Prabhakar V. Bhandare,
r/o. Laxmi Niwas, Kevnem,
Caranzalem, Ilhas, Goa.
20.Rajanikant K. Bhandare,
through his attorney Morto K. Bhandare,
r/o. H.N. 11 Ward no.12, Dona Paula.
21.Rajendra V. Bhandare, r/o
and his wife
22.Sunita R. Bhandare,
both r/o. Central Bank Colony,
G-3 La Campala, Miramar, Panaji, Goa.
23.Sushila V. Kare and her husband
24.Vassudeva V. Kare,
both c/o. Fancy Textiles,
Mafatlal Showroom,
New Bazar Cloth Market, Margao, Goa.
25.Pandurang Fotu Bhandare, and his wife
26.Miradula P. Bhandare,

r/o. Ashirwad Bldg. S. Ines, Panjim
27.Subhash Fotu Bhandare (since deceased
through legal representatives
Pet. Nos. 27(a) to 27(f))
(a) Sudhir S. Bhandare and his wife
(b) Sharda S. Bhandare
(c) Sudesh S. Bhandare and his wife
(d) Subadha S, Bhandare
(e) Sachin S. Bhandare and his wife
(f) Shreya S. Bhandare
all r/o. Gogola, Margao.
28.Susheela S. Bhandare,
r/o. Gogola, Margao
29.Jayant F. Bhandare,
r/o. Rua Abade Faria, Margao
30.Urmila J. Bhandare,
r/o. Rua Abade Faria, Margao, Goa. ..... Petitioners

Versus

1. Laximibai Mukund Bhandare (now deceased)
through her L.R.s Respondents 2 to 13
2. Auduth M. Bhandare and his wife
3. Sheela A. Bhandare
both r/o. G.I.D.C. Gonsalves Bldg.
Opp. Eldorado, Panaji, Goa.
4. Ashok M. Bhandare and his wife
5. Aruna A. Bhandare
Both r/o. Housing Board Colony
Alto Porvorim, Bardez Goa.
6. Ajit M. Bhandare
r/o. Talpavaddo, Cumbarjua Goa.
7. Abhay M. Bhandare
C/o. Ideal High School,
Taleigao, Ilhas Goa.
8. Sulabha C. Bhandari alias
Sulabh Arun Vaidya
C/o. Goa Urban Co-op Bank
Mapuca Branch, Mapuca, Goa.
9. Geeta M. Bhandare, spinster,
r/o. Talpavaddo, Cumbharjua, Ilhas, Goa.

10.Gulab Satyavan Kossambi and her husband
11.Satyavan Kossambi,
both r/o. Sanguem, Goa
12.Vanita Motilal Neurekar and her husband
13.Motilal Vishnu Neurekar
both r/o. 123/2 Sayali Apartments
14.Dr. Shrikant Keshav Bhandare
15.Dr. Suhashini S. Bhandari
both r/o. Abdul Court Housing Coop. Society,
Near Suryavaunchi Marg, Off Cadette Road,
Dadar, Bombay 400 016.
16.Shantabai K. Bhandare (now deceased)
through her L.R.s Pet. 14,15,16 to 22.
17.Sheela Chandrakant Bhandare, widow
18.Neeta C. Bhandare alias
Neeta Vishwesh Sanzguiri
19.Sanjiv C. Bhandare
20.Meera Keshav Bhandare, spinster
21.Kunda G. Dharvadkar
22.Gurudas Dharvadkar
Respondents 16 to 22 are
r/o Saptarshi Coop. Housing Society,
28/1335, Sardar Nagar No.3, Koliwada,
Sion, Bombay 400 022.
23.Hemalata Vishnu Kulkarni (now deceased)
and husband
24.Vishnu Kulkarni (now deceased)
(a) Anil Vishnu Kulkarni and his wife
(b) Anita Anil Kulkarni
(c) Arun Vishnu Kulkarni and his wife
(d) Shilpa Arun Kulkarni
(e) Ajit Vishnu Kulkarni and his wife
(f) Asha Ajit Kulkarni
(a) to (f) r/o. Narayan Mansion
P.O. No.6 Sawantwadi,
Sindhudurg Maharashtra.
25.Mohanbai Vassudeu Keni
r/o. Sanvorkato, Cuncolim.
26.Vassudev Datta Keni (expired)
through his legal representative
26(a) Smt. Mohinibai V. Keni
widow of late Vasant D. Keni

r/o. Sanvorcoto, Cuncolim,
Salcete, Goa.
The said Mohinibai Keni is already on
record as Respondent No.25.

26(b) Shri Khushal Chand V. Keni
son of late Vasant D. Keni
major in age, and his wife

26(c) Smt. Rekha Khushalchand Keni,
major in age, both r/o. 2A
Bafora Nagar Prasanna Vastu
Co-op. Housing Society,
Malad (West) Near Fire Brigade,
Mumbai-400 095.

26(d) Shri Vinayanand V. Keni
major in age, and his wife

26(e) Smt. Shaila Vinayanand Keni
major, r/o. Sanvorcoto,
Cuncolim, Salcete-Goa.

26(f) Shri Premchand V. Keni
major in age, and his wife

26(g) Smt. Suhas alias Radha (now deceased)
through legal representative 26(f)
Premchand Keni, major in age,
both r/o. Azossim, Tiswadi-Goa.

26(g) Kanchan P. Keni
Azossim Tiswadi Goa.

26(h) Shri Roshanlal V. Keni
major in age, and his wife,

26(i) Smt. Anita Roshanlal Keni
major in age,
both r/o. Near Vishant Cinema,
Aquem, Margao-Goa.

26(j) Smt. Usha Pramod Hegde
major in age and her husband

26(k) Shri Pramod Hegde
major in age, both r/o. Adhar M.G. Road,
Tilakwade Belgaum, Karnataka State.

26(l) Smt. Suvarna A. Kamat
major in age and her husband

26(m) Shri Arun N. Kamat
major in age, both r/o. Candolim,
Bardez-Goa, presently in Dubai

26(n) Smt. Shobha K. Sakhardande
major in age and her husband.
26(o) Shri Krishna M.J. Sakhardande
major in age, both r/o. Sakhardande
Apartments, Panaji-Goa.
26(p) Smt. Sajan Kerkar
major in age, and her husband
26(q) Shri Vithal alias Ulhas Kerkar
major in age, both r/o Mardol
Madcaim Road, Mardol-Goa.
26(r) Smt. Yashodhan A. Kane
major in age, and her husband
26(s) Shri Avadhuth Kane,
major in age, both r/o. Goa Velha, Goa.
26(t) Nandini V. Keni alias Nandini Kenkre
and her husband
26(u) Shri Damodar Kenkre
Next to Janata Co-op. Housing Society,
Aquem Alto-Margao.
27.Yeshwant Shripad Bhandare and his wife
28.Ramabai Y. Bhandare,
r/o. 1/389 Telang Cross Road No.3
Matunga C. Railway Mumbai 400 019
King Circle, Matunga, Bombay.
29.Raghuvir Shripad Bhandare and wife
30.Geeta R. Bhandare,
r/o. Off Vir Savarkar Marg
Prabhamandir, 1st Floor,
Prabhadevi, Mumbai 400 025.
31.Gopikabai D. Bhandare
r/o. Municipal Colony, E-2 Room No.3,
Barve Nagar, Ghatkopar West, Bombay.
32.Radhakant D. Bhandare, (expired)
through the legal representatives
(a) Shri Gurudas D. Bhandare
major, married
(b) Smt. Prafulla C. Bhandare
wife of Gurudas Bhandare,
both r/o. Municipal Colony,
E 2 Room No.3, Barve Nagar,
Ghatkopar West, 400 084, Mumbai.
(c) Shri Jaganath D. Bhandare

major, and his wife
(d) Smt. Suprabha J. Bhandare
both r/o. Vaikunth Niwas,
Behind Youth Hostel,
Miramar, Panaji-Goa.
(e) Smt. Suman Vassudev Ksalelkar,
major, and her husband
(f) Shri Vassudev Kalekar
both r/o. Prabhat View, Hindu Colony,
Dadar, Mumbai 400 014.

33.Sindhu R. Bhandare (now deceased)
through legal representative 33(a) & 33(b).
(a) Govind Pai Budbude
and his wife
(b) Anuradha G. Pai Budbude
both r/o. 11, Everest Society,
Opp. P.D.I. Office, Shubanpura,
Baroda, Gujrat 390 007.
(c) Ramnath Pai Budbude (since deceased)
through legal representative
Respondent no. 33(d) and his wife
(d) Hirabai Pai Budbude
both r/o. Damodar Housing Colony,
Bldg. 10, Block 4, Aquem,
Margao, Salcete, Goa.
(e) Subhadra alias Usha S. Pai Budbude
widow of Sidharth Pai Budbude
(f) Miss Karishma Sidharth Pai Budbude,
minor through her mother and guardian
Subhadra alias Usha P. Budbude
r/o. 20-B, Jayanti Aparts.
4th Floor, 3/1 13 Cross Maleswaram,
Bangalore 50003.
(g) Sudha Shankar Sawaikar and her husband
(h) Shankar Narcinva Sawaikar
r/o. 4B-B 2 Bldg. Harbour Heights,
N.A. Sawant Marg. Colaba,
Mumbai 400 005.

34.Kessarinath D. Bhandare (since deceased)
through his legal heirs
(a) Mr. Dattatraya K. Bhandare
(b) Mrs. Nanda D. Bhandare

both residing at : A-2/2, 2nd Floor,
Near Maruti Mandir, Davorlim,
Navelim, Salcete, Goa 403 707.

(c) Mrs. Priya Girish Rege

(d) Mr. Girish Moreshwar Rege
both residing at : 42-69,
Balmohan Vidya Mandir,
M.B. Raut Marg, Shivaji Park, Dadar,
Mumbai-400028

(e) Mrs. Smita Nilesh Faterparkar

(f) Mr. Nilesh Manohar Faterparkar
both residing at : Neelkamal,
Ground Floor, Near Ambolim Church,
Scissors Road, Andheri (west),
Mumbai-400059.
and his wife

35.Nalini K. Bhandare
r/o. R.B. Block, 7, Hrudghat, 2nd Floor,
Senapati Bapat Marg, Dadar (W.Rly)
Mumbai 400028. ..... Respondents

Mr. M. B. D'Costa, Senior Advocate with Mr. J. A. Lobo, Advocate for the petitioners.

Mr. J.A. Lobo, Advocate for respondents No.16(a) to 16(d).

Mr. D. Pangam, Advocate for respondents No.26(f).

CORAM : P.V. KAKADE, J.

DATE : 9TH AUGUST, 2006.

ORAL JUDGMENT :

Heard learned Counsel for both sides. Perused the record.

2. The matter which should have been disposed of at the stage

of admission, has unnecessarily remained pending for last six long years. The impugned order is passed by the Civil Judge, Sr. Division, Panaji in Special Civil Suit No. 76/83/B, which was a suit for partition of the property. It appears from the record that legal heirs of deceased defendant No.34 were shown as legal heirs of plaintiff No.13 and therefore, it was held that the entire suit for partition was abated as heirs of defendant No.33 were not brought on record.

3. Needless to mention that this is totally incorrect view on the relevant law, as a suit for partition cannot abate in law in its entirety, only because legal heirs of some of the defendants or one of the defendants are not on record. In the case of **Mahmud Mian (dead) through LRs. and anr. vs. Shamsuddin Mian (dead) through LRs. and ors.,** 2005(11) SCC 582, the Apex Court has disapproved this view holding that in a partition suit on account of death of one of the parties, appeal should not have been abated in its entirety and, as such, the appeal was allowed in that case.

In the present case the Order dated 17.11.1998 is hereby quashed and set aside. Rule is made absolute. The revision application is allowed with no order as to costs with direction that the Special Civil Suit No.76/83/B stands restored to the file of the Civil Judge, Sr. Division, Panaji who shall proceed with the adjudication of the matter expeditiously so as to complete the adjudication and dispose it of on merits, after giving opportunity to both sides to lead evidence within

six months from the date of receipt of writ of this Court. No order as to costs.

P.V. KAKADE, J.

ssm.